


IT IS SO ORDERED.

Dated: October 22, 2013
09:12:39 AM



Kay Woods

 Kay Woods
 United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN THE MATTER OF:)	CASE NO. 13-40813
)	CHAPTER 11
D & L ENERGY, INC., <i>et al.</i>)	
)	
Debtors and Debtors-in-Possession)	JUDGE KAY WOODS
)	
)	
)	
<u>DEBTOR</u>)	

ORDER (I) APPROVING BIDDING PROCEDURES FOR AN AUCTION SALE OF SUBSTANTIALLY ALL OF DEBTORS' ASSETS; (II) SCHEDULING AN AUCTION OF DEBTORS' ASSETS AND HEARING TO CONSIDER THE SALE OF THE DEBTORS' ASSETS AND TO APPROVE THE FORM AND MANNER OF NOTICE RELATED THERETO; (III) APPROVING THE FORM AND MANNER OF SERVICE OF NOTICE OF ASSUMPTION AND ASSIGNMENT OF LEASES AND CONTRACTS; AND (IV) GRANTING RELATED RELIEF

This matter having come before the Court on the (1) Motion (the "Sale Procedures Motion") filed on September 18, 2013 as Docket No. 203 by D&L Energy, Inc., ("D&L") & Petroflow, Inc., ("Petroflow") (collectively, "Debtors"), seeking entry

of an order: (a) establishing the bidding and auction procedures (the “Bidding Procedures”) that will govern the sale of substantially all of the assets of Debtors (the “Assets”); (b) scheduling the hearing (the “Sale Hearing”) to approve the sale of the Assets (the “Sale”); (c) approving the proposed form of service of notice (the “Sale Notice”) for the Sale; and (d) approving the form of service of notice related to the assumption and assignment of unexpired leases and executory contracts (the “Cure Claim Notice”); (2) the Limited Objection of Shale Energy, LLC, filed on October, 8, 2013, docket no. 231 (the “Shale Energy Objection”); (3) the Objection of United States Trustee (the “UST”) filed On October 10, 2013, docket no. 233 (the “UST Objection”); (4) the Response of Everflow Eastern, Inc. and Everflow Eastern Partners, L.P. filed on October 11, 2013, docket no. 234 (the “Everflow Response”); (5) the Objection of the State of Ohio, Department of Natural Resources and State of Ohio, Environmental Protection Agency (the “State of Ohio”), filed on October 11, 2013, docket no. 244 (the “State of Ohio Objection”); (6) the Document in Support filed by Debtors October 11, 2013, docket no. 235; (7) Debtors’ Response to the Shale Energy Objection filed on October 12, 2013, docket no. 237; (8) Debtors’ Response to the UST Objection filed on October 12, 2013, docket no. 248; (9) the Objection of the Official Committee of Unsecured Creditors, filed on October 14, 2013, docket no. 250 (the “Committee Objection”); and (10) the Limited Objection of Atlas Resources, LLC filed on October 14, 2013, docket no. 253 (the “Atlas Objection”).

The UST Objection, the State of Ohio Objection, the Everflow Response, the Atlas Objection, and the Committee Objection having been resolved; the Shale Energy Objection having been held in abeyance; and the Court having considered the entire

record in these proceedings to date and the arguments presented by counsel for the various parties reflected in the record at the hearing held on October 15, 2013; after due deliberation and good sufficient factual and legal cause appearing therefor, the Court finds and concludes as follows:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and Rule 5005 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). Venue is proper in this district pursuant to 28 U.S.C. § 1408 and/or 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for relief sought herein include sections 105(a), 363 and 365 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), and Bankruptcy Rules 2002, 6004, 6006, 9013, and 9014.

2. Unless otherwise defined herein, capitalized terms in this order (the “Sales Procedure Order”) shall be given the same meaning accorded to such terms as they appear in the Sale Procedures Motion.

3. Debtors are diligently marketing the Assets for sale.

4. Debtors have formulated a proposed Asset Purchase Agreement, appended to the Sales Procedures Motion (the “APA”).

5. With respect to the Sale Motion and all matters addressed in this Sales Procedures Order due and proper notice has been given to all necessary parties.

6. Debtors have shown good and sufficient business reasons for the relief requested in the Sales Procedures Motion and have exercised prudent and reasonable business judgment with respect thereto.

IT IS THEREFORE ORDERED THAT:

1. The UST Objection is sustained with respect to paragraph 16 of the proposed Bidding Procedures, which is hereby stricken from the Bidding Procedures.

2. Everflow's objection to the Sales Procedures Motion has been resolved. Everflow's counsel shall be granted immediate access to the Virtual Data Room. Everflow's right to further object to Debtors' Sale Motion is hereby preserved.

3. To the extent Atlas has a right of first refusal with respect to assets of Debtors to be sold at auction, Atlas shall notify Debtors of its intent to exercise that right no later than November 18, 2013 at 12:00 p.m. Atlas shall be permitted to attend the Auction, notwithstanding Atlas not being determined to be a Qualified Bidder prior to the Auction.

4. The State of Ohio's right to further object to Debtors' Sale Motion is hereby preserved. Debtors shall reserve funds from the sale proceeds in the amount of \$1,620,013.00, until such time as the amount of any claim the State of Ohio may have is determined.

5. Shale Energy's Limited Objection shall be held in abeyance. Debtors and Shale Energy shall have until October 22, 2013, to file briefs in support of their respective positions. In the event that Shale Energy and the Debtors are able to mutually resolve Shale Energy's Limited Objection prior to the filing of briefs herein ordered, they shall contact the Court to inform it of the proposed resolution and the Court shall consider the same.

6. The Committee is hereby authorized to retain a court reporter to record the formal bid portions of the Auction.

7. Debtors shall serve all notices related to the sale process on standard full-sized 8.5 x 11 paper, without reduction.

8. Creditors shall be permitted to attend the Auction under the supervision of the Committee.

9. Debtors shall submit a proposed Sale Order to the Court after the Auction, but prior to the Sale Hearing.

10. The Bidding Procedures are approved as attached hereto as Exhibit B.

11. Debtors shall publish a Notice of the Auction and Bid Procedures in Crain's Cleveland Business for a period of one week within (3) days of the entry of this Order.

12. The APA is hereby approved in the form as attached hereto as Exhibit A, and Debtors are authorized to proceed with the APA as part of the Bidding Procedures.

13. Within three (3) business days after the entry of this Sales Procedure Order, Debtors shall serve (except with respect to those parties receiving electronic notice in Debtors' bankruptcy proceeding) the Sale Notice, substantially in the form attached hereto as Exhibit C by regular first-class mail on the following entities: (i) all parties that contacted Debtors or their advisors in connection with the marketing and sales process for the Assets; (ii) all other prospective offerors and parties-in-interest upon written request to Debtors; (iii) all entities who receive electronic notice in Debtors' bankruptcy proceedings; and (iv) all parties pursuant to Bankruptcy Rules 6004(a), 6004(c), 6006(c) and 9014. Pursuant to Bankruptcy Rule 2002, service of the Sale Notice described herein shall constitute good and sufficient notice of the Bidding Procedures (including the APA), the Auction, this Sale Procedures Order, the Sale Motion, and the Sale Hearing

(and any proceedings to be held thereon or related thereto) on all known and unknown creditors and parties-in-interest, including persons entitled to service pursuant to Bankruptcy Rules 6004(a), 6004(c), 6006(c) and 9014. The form of Sale Notice is hereby approved.

14. Debtors shall file two motions regarding the assumption of executory contracts and unexpired leases: (1) a motion regarding executory contracts and leases governed by 11 USC §365(d)(4) will be filed on or before November 12, 2013; and (2) a motion to assume and assign executory contracts and unexpired leases for all other contracts which are included in any Successful Bid at Auction. Debtors shall serve via first-class mail upon all parties to executory contracts and unexpired leases (the “Contracts”) which Debtors will assume and assign in connection with the Sale a notice (the “Cure Claim Notice”), substantially in the form attached hereto as Exhibit D, on or before November 22, 2013, of: (a) Debtors’ intent to assume and assign the Contracts to any Successful Bidder; (b) a schedule of the Contracts and the monetary defaults, if any, associated with each Contract that is required to be cured under section 365 of the Bankruptcy Code (the “Cure Amounts”); and (c) the procedures for filing objections to the assumption and assignment of the Contracts, including any objections to proposed Cure Amounts. Service pursuant to Bankruptcy Rules 6006(c) and 9014 on those parties not receiving electronic notice shall be by first-class mail. The form of Cure Claim Notice as attached hereto is hereby approved.

15. Objections, if any, to the Sale Motion shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules and orders of this Court, shall set forth: (i) the nature of the objector’s claims against or interest in Debtors’ estates; (ii) the basis for the

objection; and (iii) all evidence in support of said objection, and shall be filed and served so as to be received on or before **November 18, 2013 at 12:00 p.m. E.S.T.**, by (a) Debtors and Debtors' counsel, (b) counsel for the Committee, (c) the United States Trustee, (d) counsel for Huntington National Bank, and (e) all parties requesting service of notice and other motions and pleadings in these chapter 11 proceedings. Any person that does not comply with this paragraph shall not be heard at the Sale Hearing. If any Qualified Bidder objects to Debtors' determination of a Qualified Bid as a higher and better bid for the Assets, the sole and exclusive remedy of such Qualified Bidder shall be to bid under protest at the Auction and, upon compliance with this paragraph, have standing at the Sale Hearing to contest Debtors' determination.

16. Except as set forth above, nothing otherwise contained in this Order shall be deemed to deprive any party of the right to object timely to the Sale Motion, all of which rights will be expressly reserved by this Order.

17. The Sale Hearing to consider the relief requested in the Sale Motion and to consider whether to approve the bid(s) by the Buyer or other Successful Bidder(s) shall be held on **November 19, 2013, at 9:30 a.m.**

18. The Bidding Procedures are solely for the benefit of Debtors and nothing contained in this Sale Procedures Order shall create any rights in any other person or bidder.

19. The Court shall retain jurisdiction to hear and determine all matters arising in or related to this implementation of the Sales Procedures Motion.

IT IS SO ORDERED.

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EXHIBIT A

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of this ___ day of _____, 2013, by and between _____, _____ ("Buyer"), D&L Energy, Inc., an Ohio corporation and Petroflow, Inc., an Ohio corporation (together, "Sellers").

RECITALS

WHEREAS, Sellers' business consists of oil & gas leases, oil & gas wells, disposal wells, real estate, rolling stock, operations, working interests, over-riding interests, royalty interests, carried interests and other interests used in or derived from its daily business as an independent energy production and marketing organization (the "Business");

WHEREAS, Sellers have filed voluntary petitions (the "Bankruptcy Case") for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Ohio (Youngstown) (the "Bankruptcy Court");

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, Buyer desires to purchase from Sellers, and Sellers desire to assign and sell to Buyer, certain assets owned by Sellers and used in the operation of the Business free and clear of all liens, claims and encumbrances to the maximum extent permitted by section 363 of the Bankruptcy Code, and to take assignment from Sellers of certain contracts pursuant to section 365 of the Bankruptcy Code;

WHEREAS, Buyer and Sellers understand and contemplate that this Agreement shall be subject to approval of the Bankruptcy Court; and

WHEREAS, upon execution of this Agreement, Purchaser will have deposited into an account with Sellers' counsel the sum of _____ (\$_____) ¹ (the "Deposit Amount") as good faith earnest money to be held pending the Closing, all of which shall apply toward the Purchase Price, as defined below.

NOW, THEREFORE, in consideration of the foregoing, which is incorporated by reference herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

¹ This amount shall be equal to 10.0% of the total Purchase Price.

1. Transfer of Acquired Assets; Assumption of Assumed Liabilities.

1.1 Purchase and Sale of Assets. On the Closing Date (as hereinafter defined), in consideration of the respective covenants, representations and obligations of Sellers and Buyer contained herein, and subject to the conditions hereinafter set forth, Sellers shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Sellers, all right, title and interest of Sellers in and to (a) those assets of Sellers set forth on Schedule 1.1(a) attached hereto, and (b) all of the rights and interests arising under or in connection with (i) any contracts listed on Schedule 1.1(b), and (ii) any purchase or sales orders entered into by Sellers in the ordinary course of the Business, but only to the extent performance thereunder is due, either in whole or in part, after the Closing, and the corresponding benefits therefrom are assigned to and received by Buyer pursuant to the terms hereof (collectively, the “Assumed Executory Contracts”). The assets and Assumed Executory Contracts referred to in subsections (a) and (b) of this Section 1.1 shall be referred to herein as the “Acquired Assets.”

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, this sale and the Acquired Assets shall exclude the following assets (collectively, the “Excluded Assets”):

1.2.1 all rights of Sellers under this Agreement and to the Purchase Price;

1.2.2 all cash (including deposits) and cash equivalents of Sellers;

1.2.3 all intercompany accounts receivable between or among the Sellers and any subsidiary or affiliate, including but not limited to the account receivable owed by North Lima Disposal Well #4, LLC (the “#4 Disposal Well”) to Seller or North Star Disposal Services II, LLC (the “#2 Disposal Well”);

1.2.4 any refund, rebate, credit or similar claim for taxes paid by Sellers or any of their subsidiaries or affiliates, whether known or unknown on the Closing Date, relating to the Business or any of the Acquired Assets other than any such refund, rebate, credit or similar right or claim relating to an Assumed Executory Contract;

1.2.5 Sellers’ corporate seals, minute books, record books, and such other books and records as pertaining to the organization, existence or ownership of each Seller;

1.2.6 Sellers’ contracts or policies of insurance for liability, property and casualty, workers’ compensation, disability, medical or health, fire or theft and any rights thereunder;

1.2.7 any leases and other contracts of Sellers that are not Assumed Executory Contracts;

1.2.8 any claims or causes of action which a trustee, debtor-in-possession,

the estate or other appropriate party in interest may assert under Sections 502(d), 510, 522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551, 553 and 724(a) of the Bankruptcy Code, including the Seller's right of setoff, recoupment, contribution, reimbursement, subrogation or indemnity (as those terms are defined by the non-bankruptcy law of any relevant jurisdiction) and any other indirect claim of any kind whatsoever, whenever and wherever arising or asserted; and

1.2.9 all other assets of Sellers not expressly identified as Acquired Assets.

1.3 Instruments of Transfer. The sale, assignment, transfer, conveyance and delivery of the Acquired Assets to Buyer shall be made by assignments, bills of sale, certificates of title and other instruments, transfers and conveyances provided for in Section 3 below and such other instruments as may be reasonably requested by Buyer to transfer, convey, assign and deliver the Acquired Assets to Buyer.

1.4 Assumed Liabilities. Buyer agrees to assume only (a) the Assumed Executory Contracts, and (b) those liabilities set forth on Schedule 1.4 (collectively, the "Assumed Liabilities"). Buyer shall, effective as of the Closing Date, be assigned Sellers' right, title and interest under the Assumed Executory Contracts and shall assume all liabilities and obligations accruing under the Assumed Executory Contracts on and after the Closing Date. Other than the Assumed Liabilities, Buyer is not assuming and shall not be liable for any liabilities or obligations of Sellers or for any other claims, liabilities or obligations in any way related to the conduct of the Business or the ownership, operation or possession of the Acquired Assets on or prior to the Closing Date.

2. Consideration.

2.1 Purchase Price. In consideration for the Acquired Assets, Buyer shall (a) pay Sellers cash in the amount of _____ Dollars (\$ _____) (the "Purchase Price"), and (b) assume the Assumed Liabilities.

2.2 Payment of the Purchase Price.

2.2.1 Upon the execution and delivery of this Agreement, Buyer shall deliver to Roderick Linton Belfance LLP, legal counsel to Sellers (the "Deposit Agent"), the Deposit Amount via a wire transfer of immediately available funds to an account designated by the Deposit Agent. At Closing, the Deposit Amount shall apply toward the Purchase Price as contemplated in Section 2.2.2. In the event the Closing does not occur because this Agreement is terminated by Seller pursuant to Section 4.4(b) or (c), Sellers shall be entitled to retain the Deposit Amount. In the event the Closing does not occur because this Agreement is terminated for any other reason (i.e., other than a termination by Sellers under Section 4.4(b) or (c), the Deposit Amount shall be returned to Buyer.

2.2.2 Closing Cash Payment. On the Closing Date, Buyer shall pay and

deliver the Purchase Price, less an amount equal to the Deposit Amount, to Deposit Agent in immediately available United States funds (the “Closing Cash Payment”).

2.3 Purchase Price Allocation. Buyer and Sellers shall agree on the allocation of the Purchase Price among the Acquired Assets as set forth on Schedule 2.3. Buyer and Sellers agree to report the transaction for income tax purposes consistent with such agreed upon purchase price allocation. In any proceeding related to the determination of any tax, neither Buyer nor Sellers will contend or represent that such allocation is not a correct allocation.

3. Closing Transactions.

3.1 Closing. The Closing of the transactions provided for herein (the “Closing”) shall take place at the offices of Roderick Linton Belfance LLP in Akron, Ohio or at such other place as to which Buyer and Sellers may agree in writing.

3.2 Closing Date. The Closing shall be held on or before (i) _____, 2013 or (ii) such other date as may be mutually agreed upon by Buyer and Sellers in writing, but in no event later than December 20, 2013 (the “Closing Date”). Until this Agreement is either terminated in accordance with Section 4.3 below or the Closing has occurred, the parties shall use commercially reasonable efforts to work to satisfy all conditions to Closing and the transaction contemplated herein shall close as soon as such conditions are satisfied or waived.

3.3 Sellers’ Deliveries to Buyer at Closing. On the Closing Date, Sellers shall make the following deliveries to Buyer:

3.3.1 A counterpart to an assignment and assumption agreement, which shall be in a form mutually agreed upon by Buyer and Sellers (the “Assignment and Assumption Agreement”), duly executed by Sellers, pursuant to which Sellers assign all their right, title and interest in the Assumed Executory Contracts (the “Assignment of Leases and Contracts”).

3.3.2 An assignment of Sellers’ rights and interests in certain oil and gas leases, which shall be in a form mutually agreed upon by Buyer and Sellers (the “Oil and Gas Leases”), duly executed by Sellers, pursuant to which Sellers assign all their right, title, and interest in the Oil and Gas Leases.

3.3.3 A bill of sale, duly executed by Sellers and in a form mutually agreed upon by Buyer and Sellers, pursuant to which Sellers transfer all their right, title and interest in that part of the Acquired Assets that constitute personal property to Buyer (the “Bill of Sale”).

3.3.4 As applicable, a counterpart assignment of intangible property, duly executed by Sellers, and in a form mutually acceptable to Buyer and Sellers (the “IP Assignment Agreement”), pursuant to which Sellers assign to Buyer all their right, title and interest, if any, in

and to that part of the Acquired Assets that constitutes intellectual property to Buyer (the “Assignment of Intangible Property”).

3.3.5 Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Seller to Buyer at the Closing, including any certificates of title.

3.4 Buyer’s Deliveries to Sellers at Closing. On the Closing Date, Buyer shall make or cause to be made the following deliveries to Sellers:

3.4.1 The Closing Cash Payment.

3.4.2 Counterparts of the Assignment and Assumption Agreement, the IP Assignment Agreement (as applicable) and the Bill of Sale, each duly executed by Buyer.

3.4.3 Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Buyer to Sellers at the Closing.

3.5 Sale, Use and Other Taxes. Any sales, purchases, transfer, stamp, documentary stamp, use or similar taxes under the laws of the states in which any portion of the Acquired Assets is located, or any subdivision of any such state, which may be payable by reason of the sale of the Acquired Assets under this Agreement or the transactions contemplated herein shall be borne and timely paid by Buyer.

3.6 Possession. Right to possession of the Acquired Assets shall transfer to Buyer as of **5:00 p.m. E.S.T.** on the Closing Date.

4. Conditions Precedent to Closing.

4.1 Conditions to Sellers’ Obligations. The Sellers’ obligation to make the deliveries required of Sellers at the Closing Date and to consummate the transaction contemplated hereby shall be subject to the satisfaction or waiver by each of the following conditions on and as of the Closing:

4.1.1 All of the representations and warranties of Buyer contained herein shall continue to be true and correct in all material respects as if made as of the Closing Date.

4.1.2 Buyer shall have made all required deliveries pursuant to Section 3.4 of this Agreement.

4.1.3 Buyer shall have delivered to Sellers appropriate evidence of all necessary action by Buyer in connection with the transactions contemplated hereby, including, without limitation: (a) certified copies of resolutions duly adopted by Buyer approving the transactions contemplated by this Agreement and authorizing the execution, delivery, and

performance of this Agreement by Buyer; and (b) a certificate executed by an officer of Buyer certifying that Buyer has performed or caused to have been performed all of the covenants and agreements required by this Agreement to be performed by Buyer prior to the Closing.

4.1.4 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof; or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.2 Conditions to Buyer's Obligations. Buyer's obligation to make the deliveries required of Buyer at the Closing and to consummate the transaction contemplated hereby shall be subject to the satisfaction or the waiver by Buyer of each of the following conditions, on and as of the Closing:

4.2.1 Sellers shall have performed each and every covenant on Sellers' part to be performed on or before the Closing.

4.2.2 All representations and warranties of Sellers contained herein shall continue to be true and correct at the Closing in all material respects as if made as of the Closing Date.

4.2.3 The Sellers shall have made all required deliveries pursuant to Section 3.3 of this Agreement.

4.3 Conditions to Buyer's and Sellers' Obligations. Notwithstanding any other provision of this Agreement, neither Sellers nor Buyer shall have any obligation to consummate the Closing of the transactions contemplated hereby without prior Bankruptcy Court approval as set forth in the entry, prior to the Closing, of an order by the Bankruptcy Court under the Bankruptcy Code substantially in form mutually agreed upon by Buyer and Sellers.

4.4 Termination. Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated and the transactions contemplated hereby abandoned: (a) at any time prior to the Closing, by mutual written consent of Sellers and Buyer; (b) by either Sellers or Buyer if a material breach of any provision of this Agreement has been committed by the other party and such breach has not been waived or cured within five (5) business days of the non-breaching party's receipt of notice of such breach by the other party, provided that such a breach is able to be cured; (c) by Sellers if any of the conditions set forth in Section 4.1 shall not have been satisfied or waived by Sellers as of the Closing Date, (d) by Buyer if any of the conditions set forth in Sections 4.2 shall not have been satisfied or waived by Buyer as of the Closing Date, or (e) by Sellers or Buyer if the Closing does not occur on or prior to _____; provided, however, that the party seeking termination pursuant to clause (b), (c), (d) or (e) above is not in breach in any material respects of any of its representations, warranties, covenants or agreements contained in this Agreement. Termination of this

Agreement shall not in any way terminate, limit or restrict the rights and remedies of any party hereto against any other party which has breached this Agreement prior to the termination hereof.

4.5 Status of Agreement after Termination. Subject to Section 4.6, upon any termination of this Agreement pursuant to Section 4.4, this Agreement shall be void and have no effect, without any liability on the part of any party hereto or any shareholders, members, directors, managers or officers thereof or any Seller, Buyer or any of their respective affiliates; *provided, however*, such termination shall not affect the liability of any party for the breach of any provision of this Agreement.

4.6 Return of Deposit. In the event that this Agreement shall be terminated pursuant to Section 4.4, Buyer's deposit will be treated in accordance with the terms of the Bid Procedures Order entered by the Bankruptcy Court which governs this transaction.

5. Sellers' Representations and Warranties. Sellers hereby make the following representations and warranties to Buyer:

5.1 Validity of Agreement. Upon the signing of this document by and between the parties, this Agreement shall constitute the valid and binding obligation of Sellers, enforceable against Sellers in accordance with its terms.

5.2 Power and Authority. Sellers have all requisite power and authority to execute, deliver and perform this Agreement and each of the transaction documents contemplated hereby (the "Transaction Documents") to which each Seller is a party.

5.3 Title to the Acquired Assets. Except as set forth on Schedule 5.3, Sellers have and on the Closing Date will have complete and unrestricted power and the unqualified right to sell, assign, transfer, convey and deliver to Buyer, and will transfer and convey to Buyer at the Closing, and Buyer will acquire at the Closing, all of the Sellers' rights, title and interests in and to the Acquired Assets free and clear of any lease, lien, security interest, claim, charge, or encumbrance whatsoever, except as set forth on Schedule 1.4.

5.4 Organization, Standing and Power. Each Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Ohio. Each Seller has all requisite power and authority to own, lease and operate its properties², to carry on its business as now being conducted and to execute, deliver and perform this Agreement and all writings relating hereto.

5.5 Authorization of Sellers. The execution, delivery and performance of this Agreement and all writings relating hereto by Sellers have been duly and validly authorized. The execution and delivery of this Agreement, the consummation of the transactions herein

² Buyer acknowledges that the State of Ohio has revoked the saltwater injection permits held by D&L Energy

contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Sellers do not and will not: (a) conflict with or result in a breach of their respective governing instruments; or (b) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court of governmental authority.

6. Buyer's Warranties and Representations. In addition to the representations and warranties contained elsewhere in this Agreement, Buyer hereby makes the following representations and warranties to Sellers:

6.1 Validity of Agreement. All action on the part of Buyer necessary for the authorization, execution, delivery and performance of this Agreement by Buyer, including, but not limited to, the performance of Buyer's obligations hereunder, has been taken. This Agreement, when executed and delivered by Buyer, shall constitute the valid and binding obligation of Buyer enforceable in accordance with its terms.

6.2 Organization, Standing and Power. Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of _____. Buyer has all requisite power and authority to own, lease and operate its properties, to carry on its business as now being conducted and to execute, deliver and perform this Agreement and all writings relating hereto.

6.3 Authorization of Buyer. The execution, delivery and performance of this Agreement and all writings relating hereto by Buyer have been duly and validly authorized. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Buyer do not and will not: (a) conflict with or result in a breach of the governing instruments; (b) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court of governmental authority; or (c) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Buyer is a party or by which Buyer or any of its assets are bound.

7. Acknowledgement.

7.1 Disclaimer. Buyer hereby acknowledges and agrees that, except as specifically stated herein, Sellers make no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Acquired Assets (including, without limitation, income to be derived or expenses to be incurred in connection with the Acquired Assets, the physical condition of any personal or real property comprising a part of the Acquired Assets or which is the subject of any Assumed Executory Contract, the value of the Acquired Assets (or any portion thereof), the transferability of Acquired Assets), the terms, amount, validity, collectability or enforceability of any Assumed Liabilities or Assumed Executory Contract, the title of the Acquired Assets (or any portion thereof), the merchantability or fitness of the Acquired Assets for any particular purpose, or any other matter or thing relating to the Acquired Assets (or any portion thereof) or the Business. WITHOUT IN ANY WAY LIMITING THE

FOREGOING, SELLERs HEREBY DISCLAIM ANY WARRANTY (EXPRESS OR IMPLIED) OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE ACQUIRED ASSETS. Buyer further acknowledges and agrees that it has conducted an independent inspection and investigation of the physical condition of all portions of the Acquired Assets and all such other matters relating to or affecting the Acquired Assets as Buyer deemed necessary or appropriate, and that, in proceeding with its acquisition of the Acquired Assets, Buyer is doing so based solely upon the representations warranties and covenants of Sellers as expressly set forth herein and Buyer's independent inspections and investigations. Accordingly, Buyer will accept the Acquired Assets at the Closing as to their condition "AS IS," "WHERE IS," and "WITH ALL FAULTS."

7.2 Use of Name. At all times after the Closing Date, Buyer shall refrain from using the name "D&L Energy" or any derivative thereof.

8. Conduct and Transaction Prior to Closing.

8.1 Access to Records and Properties of Sellers. Subject to any confidentiality agreements heretofore entered into between Buyer and Sellers, from and after the date of this Agreement until the Closing Date, Sellers shall afford to Buyer's officers, independent public accountants, counsel, lenders, consultants and other representatives, reasonable access for examination at all reasonable times to the Sellers' assets, property, employees, customers, landlords, vendors and all records or other information pertaining to the Acquired Assets or the Business. Buyer, however, shall not be entitled to access to any materials containing attorney-client privileged communications or information about employees, disclosure of which would violate an employee's reasonable expectation of privacy including any employee's medical information or workers' compensation records. Buyer expressly acknowledges that nothing in this Section 8.1 is intended to give rise to any contingency to Buyer's obligations to proceed with the transactions contemplated herein.

8.2 Operation of Sellers' Business Pending Closing. Unless Buyer otherwise consents in advance in writing, which consent may not be unreasonably withheld, conditioned or delayed by Buyer, during the period prior to the Closing Date, Sellers shall operate the Business as currently operated and, consistent with such operation, shall use commercially reasonable efforts to preserve intact their current business organization and their current relationships with employees and persons having dealings with it. Without limiting the generality of the immediately preceding sentence, during the period from the date of this Agreement to the Closing Date, without Buyer's prior written consent, which consent may not be unreasonably withheld by, Sellers shall:

8.2.1 Not offer or enter into any contract or arrangement whether for purchase, lease, sale or otherwise, other than in the ordinary course of business;

8.2.2 Not agree to sell, lease or dispose of or sell, lease or dispose of or agree to purchase any real property or machinery or equipment, other than in the ordinary course

of business;

8.2.3 Not enter into or amend or agree to amend any lease involving real estate or equipment, other than in the ordinary course of business; and

8.2.4 Use commercially reasonable efforts to maintain and keep the tangible portion of the Acquired Assets in good repair.

8.3 Employees. Sellers acknowledge and agree that Buyer shall have no obligation to employ any of their employees employed in the conduct of the Business.

8.4 Updating of Disclosure Schedules. Sellers shall promptly disclose to Buyer any information contained in their representations and warranties or any schedule to this Agreement which, because of an event occurring after the date hereof, is incomplete or is no longer correct as of all times after the date hereof until the Closing Date and such disclosures shall be deemed to modify, amend or supplement the representations and warranties of Sellers or the schedules hereto.

9. Title Evidence, Closing Fees and Proration of Utilities.

9.1 Upon Buyer's request, if the real property owned by D & L Energy, Inc. is identified as an Acquired Asset, Sellers shall deliver to Buyer a title commitment, together with copies of all exception documents, to permit Buyer the opportunity to obtain, at Buyer's sole expense, at Closing an ALTA Form B (1992) owner's title insurance policy for such real property. Sellers shall also provide to Buyer a copy of any survey(s) or other information in their possession with respect to such real property.

9.2 All fees charged by the title company to obtain the title policy shall be paid solely by Buyer.

9.3 All real estate taxes, utility charges, including gas, oil, electricity, telephone, sewer and water, pertaining to the real property shall be prorated between Sellers and Buyer as of the Closing Date, and accordingly, any invoices for utility charges received following the Closing Date which have accrued up to and including the Closing Date shall be for Sellers' account, and any invoices for utility charges which accrue after the Closing Date shall be for Buyer's account. Buyer shall be responsible for payment of any transfer tax that may be assessed on the transfer of the real property to Buyer at Closing.

10. Bankruptcy Conditions. This Agreement and the obligations of each party performed hereunder, shall be subject to the fulfillment or waiver of each of the following conditions (any one or more of which may be waived in writing in whole or in part by the written consent of Sellers or Buyer, as the case may be):

10.1 Bid Protections. The Bankruptcy Court has approved bidding procedures, which provide for Sellers to conduct an auction (the “Auction”) to enable additional qualified prospective bidders to bid for the Acquired Assets, and Sellers shall adhere to such bidding procedures. Sellers and Buyer agree, and the Sale Order (defined below) reflects the fact that the provisions of this Agreement, including this Section 10, are reasonable, were a material inducement to Buyer to enter into this Agreement and are designed to achieve the highest or best offer for the Acquired Assets.

10.2 The Hearing and the Sale Order. Sellers shall request that the Bankruptcy Court hold a hearing to consider and approve this transaction (the “Hearing”) as soon as reasonably practicable after the Auction. At the Hearing, if Buyer is the successful bidder in the Auction, Sellers shall immediately seek the entry of a final, non-appealable sale order (the “Sale Order”). The Sale Order shall, among other matters, but subject to the terms of this Agreement:

10.2.1 approve this Agreement and the consummation of the transaction contemplated herein upon the terms and subject to the conditions of this Agreement;

10.2.2 find that, as of the Closing Date, the transactions contemplated by this Agreement effect a legal, valid, enforceable and effective sale and transfer of the Acquired Assets to Buyer and, except for Assumed Liabilities, shall vest Buyer with title to the Acquired Assets free and clear of all liens, claims and encumbrances to the maximum extent permitted by Section 363 of the Bankruptcy Code (“Encumbrances”);

10.2.3 find that there are no defaults, or that any such defaults have been cured, under any of the Assumed Executory Contracts;

10.2.4 find that the consideration provided by Buyer pursuant to this Agreement constitutes reasonably equivalent value and fair consideration for the Acquired Assets;

10.2.5 authorize Sellers to assume and assign to Buyer each of the Assumed Executory Contracts, and find that, subject to the terms of the Sale Order, as of the Closing Date, the Assumed Executory Contracts will have been duly assigned to Buyer in accordance with Section 365 of the Bankruptcy Code;

10.2.6 find that Buyer is acquiring none of the Excluded Assets;

10.2.7 find that Buyer is a good-faith purchaser of the Acquired Assets pursuant to Section 363(m) of the Bankruptcy Code;

10.2.8 find that Buyer did not engage in any conduct that would cause or permit this Agreement or the consummation of this transaction to be avoided, or costs or damages to be imposed, under Section 363(n) of the Bankruptcy Code;

10.2.9 approve any other agreement to the extent provided by this

Agreement;

10.2.10 find that Sellers gave due and proper notice of the Transaction to each party entitled thereto;

10.2.11 find that Buyer has satisfied all requirements under Section 365(f)(2) of the Bankruptcy Code to provide adequate assurance of future performance of the Assumed Executory Contracts;

10.2.12 enjoin and forever bar the non-debtor party or parties to each Assumed Executory Contract from asserting against Buyer or any affiliate of Buyer or any of the Acquired Assets: (i) any default, action, liability or other cause of action existing as of the date of the Hearing whether asserted or not, and (ii) any objection to the assumption and assignment of such non-debtor party's Assumed Executory Contract (except to the extent any such objection was sustained by the Order of the Bankruptcy Court);

10.2.13 find that, to the extent permitted by applicable law, neither Buyer nor any affiliate of Buyer is a successor to either Seller or the bankruptcy estate by reason of any theory of law or equity, and except for the Assumed Liabilities, neither Buyer nor any affiliate of Buyer shall assume or in any way be responsible for any liability of Sellers and/or the bankruptcy estate, except as otherwise expressly provided in this Agreement or any Transaction Document;

10.2.14 if the Bankruptcy Court determines that the law so permits, the transfer of the Acquired Assets shall not be subject to the imposition or payment of any transfer, stamp or similar tax, and there shall not be in effect any preliminary or permanent injunction, stay, order, decree or ruling limiting the effect of the Sale Order by a court of competent jurisdiction;

10.2.15 provide that Seller is authorized and directed to consummate the transactions contemplated by this Agreement and to comply in all respects with the terms of this Agreement and the Transaction Documents;

10.2.16 be made expressly binding (based upon language satisfactory to Buyer) upon any trustee or other estate representative in the event of conversion of Sellers' chapter 11 case to chapter 7, or upon appointment of a chapter 11 trustee in Sellers' chapter 11 case; and

10.2.17 enjoin assertion of any liabilities (except for Assumed Liabilities) against Buyer or its affiliates or any assignees, transferees or successors thereof or against any of the Purchased Assets.

Section 10.3 Assignment Orders. If necessary, the entry by the Bankruptcy Court on or before the Closing Date, of any and all assignment orders, which shall be in form and substance

reasonably satisfactory to Buyer and Sellers and which shall contain each of the provisions set forth in Section 10.2 above.

Section 10.4 Sale Order. The Bankruptcy Court shall have entered the Sale Order and any assignment order, in the Bankruptcy Case, approving this Agreement and the transactions contemplated herein and Transaction Documents under sections 363, and 365 of the Bankruptcy Code, and, as of the Closing, the Sale Order and any Assignment Order shall be in full force and effect and shall not have been stayed, amended, modified, vacated or reversed.

11. Post-Closing Covenants.

11.1 Accounts Receivable. In the event Sellers shall receive any instrument of payment of any of the accounts receivable included in the Acquired Assets, Sellers shall promptly deliver it to Buyer, endorsed where necessary, without recourse, in favor of Buyer. Similarly, in the event Buyer shall receive any instrument of payment of any Excluded Assets, Buyer shall promptly deliver it to Sellers, endorsed where necessary, without recourse, in favor of Sellers.

11.2 Access to Records. Following the Closing, Sellers shall have reasonable access to and shall be permitted to review and make copies of and extractions from any corporate records of Sellers included in the Acquired Assets as may be reasonably necessary in connection with litigation or tax matters, the winding up of Sellers' business or otherwise.

11.3 Further Assurances. Each of the parties hereto shall, at any time and from time to time after the Closing, execute and deliver, or cause to be executed and delivered, to the other party or its designee, such further consents, approvals, conveyances, assignments and other documents and instruments as any party shall reasonably request in order to carry out any and all of the terms and provisions of this Agreement.

12. Miscellaneous.

12.1 Reasonable Access to Records and Certain Personnel. After the Closing, Buyer shall permit professionals retained by Sellers reasonable access to the financial and other books and records relating to the Acquired Assets or the Business (whether in documentary or data form) for the purpose of filing tax, personal property and other governmental/informational returns, which access shall include (a) the right of such professionals to copy, at Sellers' expense, such documents and records as they may request in furtherance of the purposes described above, and (b) Buyer's copying and delivering by its professionals such documents or records as Sellers may request, but only to the extent Sellers' professionals furnish Buyer with reasonably detailed written descriptions of the materials to be so copied and Sellers reimburse the Buyer for the reasonable costs and expenses thereof.

12.2 Notices. Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by either party to the other party may be effected by either (a) personal

delivery in writing, (b) FedEx or similar overnight priority courier delivery service, with instruction for signature receipt thereof; or (c) facsimile and shall be deemed communicated when received to the following:

To Sellers:

D&L Energy, Inc.
c/o Nicholas Paparodis, President
2761 Salt Springs Road
Youngstown, OH 44509

With a copy to:

Kathryn A. Belfance, Esq.
Roderick Linton Belfance, LLP
One Cascade Plaza, Suite 1500
Akron, OH 44308

To Buyer:

With a copy to:

12.3 Entire Agreement. This instrument and the documents to be executed pursuant hereto contain the entire agreement between the parties relating to the sale of the Acquired Assets.

12.4 Modification. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the parties hereto.

12.5 Closing Date. All actions to be taken on the Closing Date pursuant to this Agreement shall be deemed to have occurred simultaneously, and no act, document or transaction shall be deemed to have been taken, delivered or effected until all such actions, documents and transactions have been taken, delivered or effected.

12.6 Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of the Agreement shall survive except that, if Buyer cannot acquire and Sellers cannot sell substantially all of the Acquired Assets, either party may terminate this Agreement, and it shall be of no further force and effect, unless both parties agree in writing to the contrary.

12.7 Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

12.8 Further Assurances. Each party hereto will execute, acknowledge and deliver any further assurance, documents and instruments reasonably requested by any other party hereto for the purpose of giving effect to the transactions contemplated herein or the intention of the parties with respect thereto.

12.9 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

12.10 Brokerage Obligations. It is agreed that if any claims for commissions, fees or other compensation, including, without limitation, brokerage fees, finder's fees, or commissions are ever asserted against Buyer or Sellers in connection with this transaction, all such claims shall be handled and paid by the party whose actions form the basis of such claim and such party shall indemnify, defend (with counsel reasonably satisfactory to the party entitled to indemnification), protect and save and hold the other harmless from and against any and all such claims or demands asserted by any person, firm or corporation in connection with the transaction contemplated hereby.

12.11 Payment of Fees and Expenses. Each party to this Agreement shall be responsible for, and shall pay, all of its own fees and expenses, including those of its counsel and other professionals, incurred in the negotiation, preparation and consummation of the Agreement and the transaction described herein.

12.12 Survival. The respective representations and warranties of each party made herein shall expire at the effective time of the Closing.

12.13 Assignments. This Agreement shall not be assigned by either party hereto without the prior written consent of the other parties hereto.

12.14 Binding Effect. Subject to the provisions of Section 12.13 above, this Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, and permitted successors and assigns of the parties hereto.

12.15 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without giving effect to any choice of law or conflict of law provision which would cause the laws of any jurisdiction other than those of the State of Ohio.

12.16 Good Faith. All parties hereto agree to do all acts and execute all documents required to carry out the terms of this Agreement and to act in good faith with respect to the terms and conditions contained herein before and after Closing.

12.17 Construction. In the interpretation and construction of this Agreement, the parties acknowledge that the terms hereof reflect extensive negotiations between the parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either party hereto.

12.18 Counterparts. This Agreement may be signed in counterparts. The parties further agree that this Agreement may be executed by the exchange of facsimile signature pages provided that by doing so the parties agree to undertake to provide original signatures as soon thereafter as reasonable in the circumstances.

12.19 Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

12.20 Jurisdiction. **EACH PARTY HERETO AGREES THAT IT SHALL BRING ANY ACTION OR PROCEEDING IN RESPECT OF ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, WHETHER IN TORT OR CONTRACT OR AT LAW OR IN EQUITY, EXCLUSIVELY IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF OHIO LOCATED IN YOUNGSTOWN, OHIO (THE “CHOSEN COURT”) AND (A) IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE CHOSEN COURT, (B) WAIVES ANY OBJECTION TO LAYING VENUE IN ANY SUCH ACTION OR PROCEEDING IN THE CHOSEN COURT, (C) WAIVES ANY OBJECTION THAT THE CHOSEN COURT IS AN INCONVENIENT FORUM OR DOES NOT HAVE JURISDICTION OVER ANY PARTY HERETO AND (D) AGREES THAT SERVICE OF PROCESS UPON SUCH PARTY IN ANY SUCH ACTION OR PROCEEDING SHALL BE EFFECTIVE IF NOTICE IS GIVEN IN ACCORDANCE WITH SECTION 10.2 OF THIS AGREEMENT.**

12.21 Sellers’ Removal of Excluded Assets. To the extent that any Excluded Assets are located as of the Closing at or about any site acquired by Buyer from Sellers, Sellers shall, at the written request of Buyer, at Sellers’ sole cost and expense, cause any such Excluded Assets to be removed therefrom as soon as commercially practicable. Unless earlier requested by Buyer, Sellers shall (i) at Sellers’ sole cost and expense, have the right to cause the same to be removed therefrom on or before the date which is six (6) months following the Closing Date, and (ii) shall have the right of access to such site(s) at all reasonable times during such six (6) month period for the purpose of effecting such removal. At the expiration of such six (6) month period, Buyer shall have the right after seven (7) days prior written notice to Sellers, at its sole option, to claim ownership of such Excluded Assets or to dispose of them at Sellers’ cost and expense.

IN WITNESS WHEREOF, Buyer and Sellers have executed this Asset Purchase Agreement as of the day and year first above written.

SELLERS:

D&L ENERGY, INC.

By: _____

Name: _____

Its: _____

PETROFLOW, INC.

By: _____

Name: _____

BUYER:

By: _____

Name: _____

Its: _____

Schedule 1.1(a)

Assets to be Purchased

Subject to information provided in the data room³ regarding the assets to be included within each category below, the assets to be acquired include (check all that apply):

- Interest in North Lima Disposal Well #4**
- Northstar Disposal #2 Well**
- North Lima Disposal Well #6**
- Clarion County**, Pennsylvania Active Leases
- Columbiana County**, Ohio Active Leases
- Crawford County**, Pennsylvania Active & HBP Leases
- Guernsey County**, Ohio Active Leases
- Jefferson County**, Pennsylvania Active and HBP Leases
- Mahoning County**, Ohio Active & HBP Leases
- Mercer County**, Pennsylvania Active & HBP Leases
- Noble County**, Ohio Active Leases
- Portage County**, Ohio Active & HBP Leases
- Stark County**, Ohio Active & HBP Leases
- Trumbull County**, Ohio Active & HBP Leases
- Tuscarawas County**, Ohio Active & HBP Leases
- Venango County**, Pennsylvania Active Leases
- Warren County**, Pennsylvania HBP Leases
- Rolling Stock** - pickups
- Rolling Stock** – ATV's
- Storage/Repair building/yard**

or

- ALL OF THE ABOVE**

³ Buyer acknowledges that it has thoroughly reviewed the information provided in the data room established by SS&G Parkland Consulting, LLC with respect to the assets being purchased herein.

Schedule 1.1(b)

Contracts to be Assumed

Buyer agrees to assume the following Contracts/Leases:

Schedule 1.4

Assumed Liabilities

Buyer agrees to assume the following Liabilities:

Schedule 2.3

Purchase Price Allocation

The parties agree to the following purchase price allocation:

Schedule 5.3

Title to Acquired Assets Exception List

Bid Procedures

1. Assets to be Sold. The Debtors shall offer for sale all or substantially all of the property and assets of the Debtors' business (the "Asset Sale") as identified in further detail in the Asset Purchase Agreement (collectively the "Assets"). A list of the Assets is attached as Schedule 1.1(a) to the Form APA (hereinafter described), and is subject to the information provided in the Data Room (hereinafter described).
2. Eligibility of Bidders to Participate in Auction. In order to be eligible to bid for the Assets or otherwise participate in the Auction (defined below), each bidder must be determined by the Debtors to be a "Qualifying Bidder" (defined below). The Debtors shall have the right to determine whether any bidder is a Qualifying Bidder (a bid being submitted by a bidder determined by the Debtors to be a Qualifying Bidder by having satisfied the requirements of paragraph 4 below being a "Qualifying Bid").
3. SS&G Parkland Consulting, LLC ("SSGP") will provide interested parties with an Asset Purchase Agreement (the "Form APA").
4. Qualification of Bidders. All bids will be in writing and must be delivered to the Debtor's financial advisor, Mark D. Kozel, SS&G Parkland Consulting, LLC., 32125 Solon Road, Solon, Ohio 44139 ("SSGP"), so as to be received by or before **5:00 p.m. (Eastern Daylight Savings Time) on November 1, 2013** (the "Bid Deadline"). SSGP shall immediately provide copies of bids, including all related disclosures, to: (i) the Debtors, Nick Paparodis, D&L Energy Inc., 2761 Salt Spring Road, Youngstown, Ohio 44509; (ii) counsel for Debtors, Kathryn A. Belfance, Roderick Linton Belfance LLP, Fifteenth Floor, One Cascade Plaza, Akron, Ohio 44308; (iii) counsel for the Official Committee of Unsecured Creditors (the "Committee"), Sherri L. Dahl, Squire Sanders, 4900 Key Tower, 127 Public Square, Cleveland, Ohio 44114; (iv) Financial Advisor to the Committee, David Wehrle, BBP Partners, 1111 Superior Ave. E., Cleveland, OH 44114 (v) counsel for Holly Lupo, (sole director), Mary K. Whitmer, Kohrman Jackson & Krantz P.L.L., One Cleveland Center, 20th Floor, 1375 East 9th St., Cleveland, OH, 44114; and (vi) counsel for the United States Trustee, Scott R. Belhorn, H.M. Metzenbaum U.S. Courthouse, 201 Superior Avenue, Cleveland, OH 44114 (collectively the "Notice Parties"). Bids must include all of the following:
 - i. Evidence that establishes that the bidder has sufficient financial ability to close and consummate a sale on the terms set forth in its bid, and that the bidder will be able to provide adequate assurance of future performance with respect to any Assumed Contracts and Leases. Any bidder will agree to provide the Notice Parties and SSGP, within twenty-four (24) hours after Debtor's request, with financial statements, bank or investment account statements and other information and documents relating to its business activities and its ability to perform in the event its bid is accepted;

- ii. An executed Form APA (a "Proposed APA"), marked to show changes from the Form APA, and shall include with such submission all schedules and exhibits with respect thereto, including, without limitation, a schedule of all Assumed Contracts and Leases that are required to be assumed and assigned to the bidder as a condition of closing (the "Assumed Contracts and Leases Schedule"). Any Proposed APA shall provide that the transaction set forth therein must close on or before **December 20, 2013** unless such requirement is waived by the Debtors in consultation with the Committee;
 - iii. A good faith deposit in the form of an electronic wire transfer of immediately available funds, or a bank check, in the amount equal to ten percent (10%) of the bid amount contained in the Proposed APA (the "Deposit"), which will be deposited and maintained in a segregated escrow account subject to the terms hereof. Bank checks should be made payable to the Roderick Linton Belfance LLP Trust Account, and wire instructions will be provided upon written request made to SSGP. If a bidder becomes the Successful Bidder (defined below), its Deposit will be applied towards the amount of its Successful Bid (as defined below); and
 - iv. A written statement that (i) the proposed bidder agrees, and intends its bid to comply, with the Bid Procedures and the terms of any order approving the Sale, as well as with such other terms and procedures as may be imposed by the Court or the Debtors at or prior to the Auction, (ii) its bid (as same may be enhanced at the Auction) will be irrevocable through the conclusion of the Sale Hearing, unless such bid is the Successful Bid or the Backup Bid, in which case such bid shall be irrevocable through the Closing, (iii) that it believes in good faith that its bid constitutes a Qualified Bid, (iv) its Deposit will be treated in accordance with the provisions of these Bid Procedures, and (v) its bid (as same may be enhanced at the Auction) is not subject to any due diligence or financing conditions; and
 - v. Evidence of authorization and approval from the Qualifying Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Proposed APA.
5. Deposits. A prospective bidder who completes, signs and returns a confidentiality agreement, as outlined in paragraph 6 and submits one or more bids in accordance with paragraph 4 is termed a "Qualifying Bidder". All Deposits of Qualifying Bidders, except those of the Successful Bidder(s) and Backup Bidder(s), will be held by the Debtors' counsel and returned without interest no later than five (5) business days from the earlier to occur of (i) the closing of the transaction under the Successful Bidder's (defined below) Proposed APA, (ii) on the 5th day following the Sale Hearing, or (iii) the date the Debtor abandons the sale process contemplated pursuant to paragraph 13. The Deposit of any

Backup Bidder(s) shall be returned no later than five (5) business days following the closing of the related Successful Bidder's transaction. In the event that the Debtor abandons the sale process contemplated herein, the Debtor shall serve a notice of such abandonment on the Notice Parties. Any Deposit tendered by a Qualifying Bidder that becomes the Successful Bidder will be (i) forfeited to the Debtors (without prejudice to any other remedies available to the Debtors) in the event that such Successful Bidder breaches its obligations under its Proposed APA, or (ii) returned without interest to such Successful Bidder in the event that such Successful Bidder's Proposed APA is terminated other than by reason of any breach by such Successful Bidder of any of its obligations in connection therewith.

6. Access to the Debtors' Books and Records; Execution of Confidentiality Agreement. All potential bidders shall be required to submit any requests for information with respect to the Debtors' businesses or Assets or requests for access to the Debtors' employees, management or officers and directors to discuss the Debtors' businesses or Assets directly to SSGP, and in no event shall any bidder be granted any such access other than by means of access through SSGP. Further, as a condition precedent to being provided access to the Debtors' books, records (via a virtual data room (the "Data Room") or scheduled in-person visit) and executives, all bidders must execute, sign and return a confidentiality agreement (the "Confidentiality Agreement") as provided by SSGP, in form reasonably acceptable to the Debtors. Bidders who satisfy the foregoing requirement will be given reasonable access to the Debtors' books, records via a virtual data room, scheduled appointments to review records at the D&L office, and meetings with executives, if and as applicable, before the Auction.
7. Review of Bids. The Debtors, in consultation with the Committee, shall have the right to reject any and all bids in its reasonable discretion, subject to paragraph 13; and SSGP, in its sole discretion, and at the direction and on behalf of the Debtors, shall have the right to contact any and all Bidders at any time for the purpose of clarifying or requesting restated bids.
8. Terms of Auction. If there is at least one Qualifying Bid, the Debtor will conduct an auction sale of the Assets (the "Auction") on the following terms:
 - i. Time, Date and Location of Auction; Adjournment of Auction; Appearance of Qualifying Bidders at Auction. The Auction will be held at Squire Sanders (US) LLP, 4900 Key Tower (49th Floor), 127 Public Square, Cleveland OH 44114 on **November 13, 2013 at 10:00 a.m. (Eastern Standard Time)** or such later date as the Debtors may reasonably determine. The Debtors may continue or adjourn the Auction from time to time with reasonable notice to the Qualifying Bidders. For a Qualifying Bid to be considered, the corresponding Qualifying Bidder, or duly authorized representative, must appear in person at the Auction unless alternative arrangements are agreed upon in advance with the Debtors. Only Qualifying Bidders, or their duly

authorized representatives, shall be entitled to participate at the Auction.

- ii. The Debtors shall have the right to aggregate separate Bids for different Assets (as may be applicable) in determining whether one or more combination of Bids constitute the highest Qualifying Bid.
- iii. Auction Bid Submission Procedures. If one or more Qualifying Bids are received by the Debtors, each such Qualifying Bidder shall have the right to improve their respective bids at the Auction. Bidding will commence with the announcement of the highest Qualifying Bid and will continue in bidding increments (the "Bid Increment") that will be determined by the Debtors and announced at the Auction, and bidding will continue until the Debtor concludes the Auction. In order to encourage a robust bidding process, the Debtors shall evaluate Qualifying Bids using the criteria set forth in paragraph vi., below, and shall consider each bid's net benefit to the estates in determining the Bid Increment.
- iv. Irrevocability of Bids; Rejection of Bids. All Successful Bids and Backup Bids shall be irrevocable through the closing. All other Qualifying Bids and successive bids at the Auction shall be irrevocable through the Sale Hearing. Formal rejection by the Debtors of a Qualifying Bid or any successive bid thereto will not be deemed to have occurred unless and until (a) the Debtors expressly rejects such bid or (b) the Sale Hearing.
- v. Selection of Prevailing Bid. Within twenty-four (24) hours of the conclusion of the Auction, the Debtors, in consultation with the Committee, will determine and announce the highest and best bid or bids submitted at the Auction constituting the superior bid (the "Prevailing Bid(s)," taking into account, among other things, the factors enumerated in paragraph vi below, with the entity (or entities) submitting such Prevailing Bid(s) being the "Successful Bidder(s)"). Within twenty-four (24) hours following the announcement of the Prevailing Bid(s), unless and to the extent otherwise agreed by the Debtors, in consultation with the Committee, the Successful Bidder(s) shall complete and execute an asset purchase agreement substantially in the form of the Proposed APA, and in form and substance reasonably acceptable to the Debtors memorializing, among other things, the amount of the Prevailing Bid (a "Successful Bidder APA").
- vi. The value of a Bid, for purposes of these proceedings, shall be determined by comparing, among other things, (i) the type, number and nature of any changes to the Form APA requested by each Bidder, (ii) the extent to which such modifications are likely to delay the closing of the Sale to such Bidder, and the cost to the Debtors and their estates of such modifications or delay, (iii) the extent to which such Bid includes the purchase of all or less than all of the Assets, or group of Assets, (iv) the type and amount of consideration to be received by the Debtors'

estates, (v) the existence of any financing, due diligence or other contingencies, (vi) the amount of any Cure Payments, which, if paid, would reduce the proceeds available for distribution to creditors, (vii) the likelihood of the Bidder's ability to close the transaction, and (viii) the net benefit to the Debtors' estate and its creditors.

- vii. Hearing. The Debtor will present the Prevailing Bid(s) to the Court for approval in conjunction with the Sale Hearing.
9. Closing. The closing of the Sale of the Assets will occur in accordance with the terms of the Successful Bidder APA(s), or the asset purchase agreement(s) of the entity otherwise authorized by the Court to purchase the Assets, as applicable. In no event shall the Sale of Assets close later than **December 20, 2013**, unless such requirement is waived by the Debtors in consultation with the Committee.
10. Failure of Prevailing Bidder to Consummate Purchase; Designation of Backup Bidder. If for any reason the Successful Bidder fails to consummate its purchase of the Assets, the Debtors, without the necessity of coming back before the Court, may deem the bidder of the second highest and best bid for the Assets (such bidder being the "Backup Bidder," with such bid being the "Backup Bid") to have submitted the Prevailing Bid. If the Debtor so designates a bidder as a Backup Bidder, such Backup Bidder shall be required to complete and execute an asset purchase agreement substantially in the form of the Proposed APA, and in form and substance reasonably acceptable to the Debtors memorializing, among other things, the amount of the Backup Bid.
11. Assignment of Previously Assumed Leases and Contracts. Each Qualifying Bidder that submits a bid for substantially all of the Debtors' Assets shall, pursuant to their respective Proposed APA (and in the case of the Successful Bidder, the Successful Bidder APA), agree to accept the assignment of any and all unexpired leases and/or executory contracts previously assumed by the Debtors, if any, provided, however, that a Qualifying Bidder submitting a bid for certain specific Assets, but for less than substantially all of the Debtors' Assets, shall not be required to accept the assignment of any and all unexpired leases and/or executory contracts previously assumed by the Debtors as part of its bid.
12. Assumption and Assignment of Unexpired Leases and Executory Contracts. Prior to the commencement of the Sale Hearing, the Successful Bidder shall provide the Debtors with a final list of those Assumed Contracts and Leases, not specifically contained within the Successful Bidder's Proposed APA and not previously assumed or rejected by the Debtors, that the Successful Bidder wishes to have assumed by the Debtors and assigned to the Successful Bidder in connection with the Sale provided that any Assumed Contract or Lease added to the list after the Auction will not decrease the net consideration received by the Debtors from the Sale.
13. Reservation of Rights; Deadline Extensions. The Debtors shall be deemed to have reserved its right to: (i) cancel the Auction; (ii) extend the Bid Deadline; (iii)

impose such other and additional terms and conditions or modify the terms and conditions hereof as the Debtors determines to be in its best interest and (iv) reject all Qualifying Bids if, in the Debtors' reasonable judgment, in consultation with the Committee, no Qualifying Bid(s) is/are in the best interests of the Debtors' estates. In the event Debtors reject a bid or bids over the objection of the Committee or the United States Trustee, the Court shall schedule a telephonic hearing or conference to resolve the dispute. The Debtor shall serve a notice of such changes on: (i) the Court, (ii) all Qualified Bidders, and (iii) the Notice Parties.

14. All Qualifying Bidders at the Auction shall be deemed to have consented and submitted to the core jurisdiction of the United States Bankruptcy Court for the Northern District of Ohio in Youngstown, Ohio and waive any right to a jury trial, or trial any other court or jurisdiction, in connection with disputes relating to the marketing process, the Auction and the valuation of any bid as outlined in paragraph 8. iv. above.
15. Sale of Assets "As Is". All of the Assets shall be transferred "as is." **THE DEBTORS SHALL BE DEEMED TO HAVE EXPRESSLY DISCLAIMED ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE NATURE, QUALITY, VALUE OR CONDITION OF ANY ASSET.**

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN THE MATTER OF:)
)
D & L ENERGY, INC., *et al.*)
)
Debtors and Debtors-in-Possession)
)
DEBTOR)

CASE NO. 13-40813
CHAPTER 11
JUDGE KAY WOODS

**NOTICE OF HEARING, AUCTION AND BIDDING PROCEDURES FOR SALE OF
SUBSTANTIALLY ALL OF THE ASSETS OF DEBTOR AND SALE MOTION**

Debtors filed a Motion for an Order: (1) Authorizing the Sale of Substantially All of the Debtors' Assets, Free and Clear of Liens, Claims, Interests and Encumbrances, Subject to Higher or Better Offers, Pursuant to Bankruptcy Code Sections 363 and 365; (2) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with such Sale and Determining and Adjudicating Cure Amounts with Respect to Such Contracts and Leases; (3) Waiving the Fourteen-Day Stay Period Provided by Bankruptcy Rule 6004(H); and (4) Granting Related Relief (the "Sale Motion"). Capitalized terms that are not defined in this Notice shall have the same meaning as set forth in the Sale Motion.

Debtors also filed a Motion for an Order: (1) Approving Bidding Procedures for an Auction Sale of Substantially All of Debtors' Assets; (2) Scheduling an Auction of Debtors' Assets and Hearing to Consider the Sale of the Debtors Assets and to Approve the Form and Manner of Notice Related Thereto; (3) Approving the Form and Manner of Service of Notice of Assumption and Assignment of Leases and Contracts; and (4) Granting Related Relief (the "Sales Procedures Motion"). At a hearing held on October 15, 2013, the Court approved certain bidding and auction procedures (the "Bidding Procedures") pursuant to which the Debtors will solicit bids and seek authority to sell (the "Sale") substantially all of the assets of Debtors (the "Assets"), that are the subject of the Sale Motion. Capitalized terms that are not defined in this Notice shall have the same meaning as set forth in the Sales Procedures Motion.

NOTICE IS HEREBY GIVEN, that copies of the Sale Motion, the Sales Procedures Motion, the Sales Procedures Order and Bidding Procedures which govern the participation in the Auction have been filed with the Bankruptcy Court and may be viewed on-line at <http://www.ohnb.uscourts.gov> or obtained free of charge by contacting Catherine M. Djukic, paralegal, Roderick Linton Belfance, LLP, Telephone: (330) 434-3000 or by email at cdjukic@rlblp.com.

NOTICE IS FURTHER HEREBY GIVEN that the Auction Contemplated by the Bidding Procedures is scheduled for **November 13, 2013 at 10:00 a.m. E.S.T.** in the offices of Squire Sanders (US) LLP, 4900 Key Tower (49th Floor), 127 Public Square, Cleveland OH 44114.

NOTICE IS FURTHER HEREBY GIVEN that the hearing to consider approval of the Sale Motion and the Sale of the Assets to the bidder(s) submitting the highest and best offer(s) at the Auction shall be held on **November 19, 2013, at 9:30 a.m. E.S.T.** (the "Sale Hearing"), at the United States Bankruptcy Court, Federal Building & US Courthouse, 10 East Commerce Street, Youngstown, Ohio

44503. Any objections to the Sale Motion shall be in writing, shall conform to the Bankruptcy Rules and the Local Rules and orders of this Court, shall set forth in writing (i) the nature of the objector's claims against or interests in the Debtors' estates; (ii) the basis for the objection; and (iii) all evidence in support of said objection, and shall be filed and served so as to be *received* by counsel for the Debtors on or before **November 18, 2013 at 12:00 p.m. E.S.T.** Any person that does not comply with this paragraph shall not be heard at the Sale Hearing. If any Qualified Bidder objects to the Debtors' determination of a Qualified Bid as a higher and better bid for the Assets, the sole and exclusive remedy of such Qualified Bidder shall be to bid under protest at the Auction and, upon compliance with this paragraph, have standing at the Sale Hearing to contest the Debtors' determination.

NOTICE IS FURTHER HEREBY GIVEN that any inquires regarding information contained in this Notice should be directed to Steven J. Heimberger, Esq. Roderick Linton Belfance, LLP; Telephone (330) 434-3000 or by email at sheimberger@rbllp.com.

Dated: October 18, 2013

Respectfully submitted,

/s/ Kathryn A. Belfance

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Counsel for Debtors and Debtors in Possession

EXHIBIT D

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN THE MATTER OF:)	CASE NO. 13-40813
)	CHAPTER 11
D & L ENERGY, INC., <i>et al.</i>)	
)	
Debtors and Debtors-in-Possession)	JUDGE KAY WOODS
)	
)	
)	
<u>DEBTOR</u>)	

NOTICE OF ASSUMPTION AND ASSIGNMENT OF CONTRACTS

PLEASE TAKE NOTICE OF THE FOLLOWING:

You are receiving this Notice because you have been identified as having an interest in one or more Oil and Gas Leases or other contracts with D&L Energy, Inc. or Petroflow, Inc. (the “Debtors”) that are listed on the attached Exhibit 1. The Debtors have sold substantially all of their assets at auction, including their rights under the Oil and Gas Leases and/or contracts listed on the attached Exhibit 1. Exhibit 1 sets forth the amount (the “Cure Amount”) the Debtors believe they owe to you based upon their default under the Oil and Gas Lease or contract. The Debtors intend to pay you the Cure Amount listed on Exhibit 1 upon the assumption of the Oil and Gas Lease in connection with the sale of the Debtors’ assets.

You do not need to take any action with respect to this Notice unless you disagree with the Cure Amount on Exhibit 1 that the Debtors are required to pay to you and/or you object to the Debtors’ assumption and assignment of their interest in the Oil and Gas lease and/or contract as part of the sale of their assets.

If you do object to the cure amount listed or to the assumption and assignment of a Debtors interest in your Oil & Gas Lease or contract, then on or before **December 13, 2013 at 5:00 p.m. E.S.T.** (the “Objection Deadline”), you or your attorney must file a written objection (the “Objection”) explaining your position at:

**United States Bankruptcy Court
Nathaniel R. Jones Federal Building & US Courthouse
10 East Commerce Street
Youngstown, Ohio 44503**

If you mail your Objection to the Court for filing, you must mail it early enough so the Court will receive it on or before the Objection Deadline. The Objection must include (a) the basis for your objection; and (b) documentation in support of your objection.

All parties that file a timely Objection are required to appear at a hearing, which is scheduled to take place on **December __, 2013 at 9:30 a.m. E.S.T.** at the United States Bankruptcy Court, Nathaniel R. Jones Federal Building & US Courthouse, 10 East Commerce Street, Youngstown, Ohio 44503.

Within (30) days after the Debtors assign their interest in the Oil and Gas Leases and/or contracts in connection with the sale of their assets, the Debtors will mail you a Notice, which will contain the name and address of the entity or person to whom your Oil and Gas Lease and/or contract has been assigned as part of the asset sale.

Any inquires regarding information contained in this Notice should be directed to Steven J. Heimberger, Esq. Roderick Linton Belfance, LLP; Telephone (330) 434-3000 or by email at sheimberger@rblbp.com.

Dated: November __, 2013.

Respectfully submitted,

Roderick Linton Belfance LLP

/s/ Kathryn A. Belfance
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EXHIBIT 1 - TO BE SUPPLEMENTED